

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19**

ALBERTSON'S, INC.

Employer

and

Case 36-UC-269

TEAMSTERS LOCAL 305, affiliated  
with INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, AFL-CIO

Petitioner

**DECISION AND ORDER DENYING UNIT CLARIFICATION**

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>1</sup> in this proceeding,<sup>2</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Union is a labor organization within the meaning of the Act.

**The Unit and ACMs**

The Employer is engaged in the operation of retail grocery stores and warehouse facilities in several states, including the warehouse facility in Portland, Oregon involved herein. Petitioner is seeking to add accuracy control monitors (ACMs) to its contractual unit. The current contract has a term of approximately December 1996<sup>3</sup> to September 8, 2001. The position of ACM was instituted in September, 1998.

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<sup>1</sup> The parties filed briefs, which have been considered.

<sup>2</sup> A hearing was held in this matter on January 21, 1999. At the request of Petitioner, further hearing was held on March 3, 2000.

<sup>3</sup> The record does not establish the date on which the contract term commenced. The contract says variously that it was entered into on November 3, 1996; that it was executed on December 6, 1996; and that it will be in effect from the date of ratification. The record does not reveal the date of ratification.

The bargaining unit (“Unit”) is described in the contract as follows:

All classifications contained in Appendix “A,” including driver and warehouse workers, long haul drivers, warehouse repair employees, warehouse equipment mechanics, truck mechanics, truck equipment mechanics, and fuelers, washers, lubrication and maintenance employees, repackers and stampers, salvage and cleanup employees and janitors employed by Albertson’s, Inc. at its Distribution Center located at 17505 Northeast San Rafael Street, Portland, Oregon 97230, excluding the warehouse managers, supervisors and assistant supervisors, rapistan supervisors, banana person and buyers, dispatchers, salespersons, office clerical employees, confidential employees, professional employees, guards, watchmen, and supervisors as defined in the Act.<sup>4</sup>

The facility involved herein, a distribution center, ships merchandise to various of the Employer’s grocery stores in the Portland area. The distribution center receives goods, warehouses them, and then ships goods directly to the stores. The stores “pay” the distribution center for the goods. Historically, there have been chronic disputes between the stores and the distribution center as to whether particular shipments received by the stores were in agreement with the orders made by the stores.

According, to the Employer, it felt that these disputes were caused partly by a lack of accountability on the part of the warehouse employees for errors. Unit members were checking on the accuracy of fellow Unit members’ work. There was a disincentive to report a fellow Unit member’s errors, etc. It was important from the Employer’s viewpoint, that stores be accurately “charged” with “purchases” for cost reporting/profitability assessments, as well as loss control purposes. Thus, the Employer established a more accurate, reliable checking system, a system administered by individuals assigned to a different, non-Unit department, the accounting department.

Warehouse employees are given strips of computer generated labels for items ordered by a particular store. (This and related paperwork is performed by non-unit shipping and receiving clerks. See, *infra*). The warehouse pulls an item from the warehouse stock, applies the respective label, and stacks the item on a pallet. The warehouse is divided into departments, such as produce, meats, delicatessen, frozen foods. Pallets for individual stores are “built” separately by the departments, and are taken on forklifts or pallet jacks to the loading dock.

A percentage of the pallets are audited, depending on the value of the contents, and other considerations; that is, the items on the pallet are compared with the list of items on the pick list. In the past, unit warehouse employees were assigned the auditing function, using a clipboard, paper, and pencil. Record evidence is in conflict as to whether such employees were assigned to auditing on a rotating, weekly basis, or for more extended periods of time but it is clear the work was performed by warehouse workers. It does appear that there were some limited long-term assignments, as well as regular, week-long rotations. Such warehouses were in the same job classification as the other warehouse workers who performed the order selecting and operated forklifts and pallet jacks.

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<sup>4</sup> The classifications listed in Appendix “A” are: warehouse workers, mileage drivers, hourly drivers, sanitation and utility labor, and mechanics.

Since September 1998, the auditing function has been assigned to the new classification of ACM.<sup>5</sup> ACMs use a handheld electronic scanning device to audit the items on a pallet. Warehouse employees still locate and pick the selections called for, build the pallet-load, and transport it to the loading dock. The ACM now reads the description on the label, then scans the UPC bar code. Meat and produce are pre-packed in cases which are large enough so that the labels can be read without disturbing the placement of cases on the pallet. Deli grocery and deli meat items are pre-packed in smaller cases, and it is necessary for the ACM to break down and rebuild the pallet in order to read all the labels. The ACM determines if the right amounts of the right merchandise are ready for shipment to the store. The scanner transmits information wirelessly to a single on-site computer which apparently signals discrepancies to the ACM. It is the Employer's policy that ACMs not operate forklifts or pallet jacks, and that they not go into the warehouse stocks to retrieve goods missing from an order. The ACM is supposed to ask the selector who picked the order to correct any error. However, ACMs have been seen carrying cases of frozen groceries out of the freezer five or six times a day, and on at least one occasion an ACM was seen using a pallet jack to move a pallet for access. Once the audit is completed, the pallets are loaded into a truck or trailer by Unit employees, and to be driven to the store by a Unit driver.

In January 1999, there were about 13 ACMs. By March 2000, there were an unspecified additional number. The ACMs are all new hires, except for two who were formerly employed as non-unit shipping and receiving clerks. Their training requires two or three days. Since September 1998, when the ACMs commenced working, there has been no interchange between them and Unit employees.

Christopher Preli is the director of the distribution center. Ray Clang, who reports to Preli, is the general manager. The various department managers, who are responsible for purchasing goods for their own departments, report to Clang. Warehouse manager Ed Vandenderen, transportation manager Dan Madding, and facility maintenance manager Jamie Hansen report directly to Preli. Unit employees work under the direction of supervisors who report to Vandenderen, Madding, or Hansen.

Controller Robert Wilcox also reports to Clang. Various accounting and human relations personnel report to Wilcox. Inventory control coordinator Robert VanEtten reports to Dave Schutte, the accounting manager, who reports to Wilcox. The ACMs report to VanEtten, as do four inventory control specialists. ACMs are hired by VanEtten, Schutte, and Wilcox. The ACMs perform their work in the loading dock area. Van Etten visits the loading dock area about once a week. Present in the loading dock area on a daily basis are warehouse supervisors, who occasionally give minor directions to ACMs. For example, an ACM might tell warehouse supervisor Don Bolton that he is going into the freezer to see if the right product is in a particular slot. The ACM may come "out" of the freezer and inform Bolton that a certain product is out, although it is shown on the computer as being in stock. Bolton may then tell the ACM to give an order selection tag to the forklift driver.<sup>6</sup> In addition, there is non-specific, conclusionary "evidence" that other warehouse supervisors somehow "give direction" to ACMs, and resolve disputes between ACMs and unit employees.

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<sup>5</sup> Prior to this time, the auditing *function* was performed by Unit employees, in the manner and circumstance described herein. The new ACM position was created, and the function transferred from the Unit to the ACMs. The Union filed a Section 8(a)(5) charge in Case 36-CA-5402 about this change. The charge was dismissed on 9/29/99, on the grounds that the Union had acquiesced in the change. The dismissal was not appealed. Thus, the issue here is not whether the re-assignment was proper; rather, the issue is, *given* the re-assignment, are the new ACMs an accretion, or do they raise a QCR?

<sup>6</sup> Apparently to retrieve the item from another location, perhaps a reserve storage slot??

## **The Plant Clerical/Office Clerical Distinction and Relevance**

It is argued by the Employer that the ACMs are plant clericals, and that there is a practice of exclusion of plant clericals from the unit. It is countered by the Union that any such clericals have been historically excluded from the Unit because they are specifically excluded as “office” clericals, not because of any practice of exclusion of “plant” clericals. Employed in the distribution center are three arguable plant clerical positions which have been historically excluded from the unit. These are: inventory control specialists; shipping and receiving clerks; and maintenance clerks. (Office clerical employees are specifically excluded from the unit.)

As has been said, the four inventory control specialists report to VanEtten. They spend up to 80 percent of their time on the warehouse floor. The record does not reveal the nature of their job duties, but the parties are in agreement that the inventory control clerks are plant clerical employees, and excluded from the Unit.

There are about eight shipping and receiving clerks, who work in an office located between the perishables and the grocery departments. They schedule inbound freight deliveries by common carriers, receive the carrier into the building, hold his bill of lading, communicate with warehousemen as to what was received as compared to what was ordered, sign the driver’s bill of lading, and enter the received inventory into the computerized perpetual inventory. They also prepare shipping documents for the selection and shipping crews, prepare the selection labels, prepare the loading documents that tell the loaders which items go on which truck, prepare bills of lading for the stores, and deliver the trip packet containing all invoices for a store to the transportation office. The Employer takes the position that the shipping and receiving clerks are plant clericals, while Petitioner regards them as office clericals.

There is one, non-Unit transportation maintenance clerk. This person is involved in ordering and receiving parts for tractor-trailers in the truck shop, purchases fuel, and monitors and charges out parts used by the Unit shop mechanics. In addition there is one, non-Unit facilities maintenance clerk, who checks out and records the use of parts for equipment such as forklifts and pallet jacks, and picks up parts as needed from suppliers. (The facility maintenance mechanics, working in the same department, are Unit employees.) As with the shipping and receiving clerks, the Employer regards the excluded transportation maintenance clerk and the facilities maintenance clerk as plant clericals, while Petitioner regards them as office clericals.

## **Petitioner’s Accretion Agreements**

Petitioner contends that ACMs are an accretion to the existing unit because they are performing a function which bargaining unit employees performed for the six to eight years prior to September 1998, and, further that they share a community of interest with the unit in that they have similar job duties, work side-by-side with them, and share common working conditions and supervision. In support of its contentions, Petitioner relies on the Board’s findings in *United Food & Commercial Workers Union, Local 1222*, 262 NLRB 817 (1982); *Bay Shipbuilding Corp.*, 263 NLRB 1133 (1982); and *United Technologies Corporation*, 287 NLRB 198 (1987).

The Board will find an accretion only where the new employees in question have little or no separate group identity and thus cannot be considered a separate appropriate unit, and when the additional employees share an overwhelming community of interest with the preexisting unit. *Safeway Stores, Inc.*, 256 NLRB 918 (1981). In *Towne Ford Sales*, 270 NLRB 311 (1984), the Board identified certain factors critical to finding an accretion: the degree of interchange, and whether day-to-day supervision of employees is the same in the group sought to be accreted as in the existing unit. Other factors considered

relevant by the Board are similarity of terms and conditions of employment; similarity of skills and functions; physical, functional, and administrative integration; and bargaining history. See *Compact Video Services*, 284 NLRB 117 (1987).<sup>7</sup>

In the *UFCW* case cited by Petitioner, the Board addressed the issue of the accretion of SCORE marking employees to the Union's existing unit of all selling and non-selling employees employed by Fed-Mart Stores, Inc. in all of its retail stores within the geographic jurisdiction of the Union. A parallel issue was the accretion of the SCORE marking employees to a unit of primarily warehouse personnel represented by Teamsters. The issue involving UFCW arose in the context of an 8(b)(4)(ii)(D) unfair labor practice case. During the ensuing 10(k) hearing, IBT filed a unit clarification petition, and a representation petition in which it sought, as an alternative to accretion, to represent the SCORE marking employees in a separate unit. The proceedings in the three cases were consolidated. The SCORE marking system was a new price and inventory marking system instituted by the employer. The Board found the employees at issue to be an accretion to UFCW's unit, inasmuch as they were performing the same basic functions that UFCW unit employees had performed using the employer's previous system. In so finding, the Board found it significant that the overwhelming majority of employees selected to be SCORE marking employees were members of UFCW's bargaining unit, and that they were so chosen because they already possessed the requisite skills and needed only to learn how to use the new computerized technology.

In *Bay Shipbuilding*, an unfair labor practice case involving an allegation of violation of Section 8(a)(5) of the Act, "lofting" employees were at issue. These employees worked in a department called "the loft," where they took information regarding a ship to be built, and, part by part, determined what shape each three-dimensional part would have if laid flat. They then produced full-sized layouts of parts from which templates were made of wood or plastic. The templates were used as a guide or pattern for cutting the pieces from steel sheets. The lofting employees had historically been included in the Union's overall production and maintenance unit. The employer then converted the process of producing the cutting layouts from a manual to a computerized operation. At the same time, it designated the computerized lofting operation as a new department outside the bargaining unit. The same lofting employees were put to work in the new department. The Board upheld the ALJ's conclusion that the lofting employees continued to be included in the unit.

In *United Technologies*, an unfair labor practice case involving an allegation of violation of Section 8(a)(5) of the Act, the Employer replaced unit expeditors with non-union production control coordinators who performed essentially the same functions, but used computerized equipment. Many expeditors were re-assigned as production control coordinators, and in addition, production inventory clerks - another unit position - were also re-assigned as production control coordinators. The Board upheld the ALJ's conclusion that the employer was obliged to bargain regarding the new production control coordinators, as their function was the same as that of the expeditors.

## **Decision**

The cases cited by Petitioner are distinguishable from the matter herein, in that in those cases, the employees assigned to the new classification were exclusively or primarily former unit employees, whereas here none of the ACMs was formerly employed in the Unit. In the cases cited by Petitioner, former unit employees were continuing to perform their old functions using new technology under a new job title, sometimes under the same supervision. Even if supervision or department assignment were changed, the factor of heavy permanent transfers from the old department to the new department (in

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<sup>7</sup>

We are not here dealing with additions to a classification already concededly already in the Unit.

setting up the changed system) cannot be ignored. They were essentially the same faces, with a new title. Here, newly hired employees or non-Unit employees, in a new job classification,<sup>8</sup> are using new technology to perform a function previously assigned to unit employees.

[In *The Sun*, 329 NLRB No. 74 (1999), the Board said that where the scope of a unit is defined by the work performed, then such scope is central to the Board's analysis in determining whether a new group of employees should be added to an existing bargaining unit. In *The Sun*, the Board announced a standard to be applied in unit clarification proceedings involving bargaining units defined by the work performed: If the new employees perform job functions similar to the job functions performed by unit employees, as defined in the "work-performed" unit description, the Board will presume that the new employees should be added to the unit, unless the unit functions they perform are merely incidental to their primary work functions or are otherwise an insignificant part of their work. Here, by contrast, the contractual unit is not defined by the work performed, and the *Sun* presumption does not apply.]

In conclusion, we have new faces - new hires or non-unit transfers - performing a pre-existing function with new technology. These individuals are administratively attached to a distinctly separate department; their supervisory chain of command is separate from the warehouse's chain until the highest level of supervision at the warehouse, the Director, four levels above the first level of supervision in the ACM chain. There is zero interchange of employees between the groups, not even an overlay of functions, except for the relatively infrequent occasions when ACMs have ignored outstanding instructions and pulled a miniscule number of cartons. These factors are the critical factors under the *Safeway* test for accretion.

In addition to these key factors, I note that the ACMs perform all, and only, the inventory quality control functions, in contrast to the former practice of spreading the checking work around the Unit on assignments of somewhat unclear duration. This work -- quasi-clerical -- is largely non-manual when compared to the warehouse employees'. Warehouse workers routinely use forklifts and other powered equipment, while ACM's use only the hand-held scanner. It is true that the ACM functions are integrated into the overall picking/delivery operation, in that their work must follow the picking, and precede loading. However, the re-checking function<sup>9</sup> is not a necessary step in the warehouse operation -- in fact, only a percentage of all pallets are checked by the ACMs.

Much was made by the parties of the office clerical/plant clerical distinction concerning Unit positions, noting the specific exclusion of office clericals and the tacit exclusion of at least one (and possibly more) plant clerical classifications. There is no showing of any actual agreement to exclude plant clericals as a class and I do not conclude that the historic *de facto* exclusion of one or more plant clerical classifications as per se precludes the Unit inclusion of a new plant clerical classification.

Assuming, *arguendo*, that there existed even several categories of other unrepresented plant clericals, I would give this minimal weight. Likewise, assuming the ACMs were the only plant clericals, I would give this minimal weight as well. In my view, the *Safeway* criteria are controlling, and many additional factors make the line between warehouse employees and ACMs even more distinct.

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<sup>8</sup> Recall that there were no "checkers" pre-change, only generic warehouse workers who rotated in and out of the function.

<sup>9</sup> The pickers are obviously required to check their own work as they go.

Thus, I find that a QCR exists, and that the means for determining the representation of the ACMS is via an election, absent voluntary resolution in another manner. Accordingly, I shall dismiss the petition.

**ORDER**

**IT IS HEREBY ORDERED** that the petition filed herein be, and it hereby is dismissed.

**RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by April 19, 2000.

**DATED** at Seattle, Washington, this 5th day of April, 2000.

/s/ PAUL EGGERT

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Paul Eggert, Regional Director  
National Labor Relations Board, Region 19  
2948 Jackson Federal Building  
915 Second Avenue  
Seattle, Washington 98174

385-7533-2060  
440-6725-7567-5067